**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**DIVISION OF JUDGES**

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| **NATIONAL RURAL LETTER CARRIERS, ASSOCIATION,** | ) | |
| **Respondent,** | ) | **Case No. 15-CA-213552** |
| **and** | ) | |
| **AMANDA WILLIAMS,** | ) | |
| | ) | **Date: October 9, 2018** |
| **Individual Charging Party** | ) | |

**MOTION TO INTERVENE BY**
**THE UNITED STATED POSTAL SERVICE**

Pursuant to Section 102.29 of the Board's Rules and Regulations, the United States Postal Service hereby moves to intervene in the above-cited case and be granted leave to file a post-hearing brief. The USPS is the employer and is a party to the collective bargaining agreement giving rise to the instant dispute. Phillips Petroleum Co., 48 NLRB 248-249 (1943)(being a party to a current contract with a party is sufficient interest in the proceeding to warrant intervention). Most significantly, as a party to the grievance settlement(s) challenged by the Charging Party, the USPS has a vital interest in the proceedings in this case.

The settlements at issue in this case were reached through good-faith arms-length negotiations and as a matter of national labor policy such negotiated settlements are the explicit aim of the National Labor Relations Act. Charging Party's effort to challenge such settlements is a direct attack on the very negotiations between Respondent National Rural Letter Carriers Association ("NRLCA") and the USPS that the Act is intended to promote. As such, the USPS has a vital interest in defending the challenged settlements and in addressing the good faith of both parties in the collective

bargaining process that lead to these settlements and other agreements. Moreover, if the Charging Party is permitted to challenge the validity of the grievance settlement(s) here, the proverbial floodgates will be opened to any and all employees who are dissatisfied with future grievance settlements entered into by the USPS and the NRLCA (or any other union). This would have a devastating impact on the ability of the USPS to achieve finality and resolve disputes raised in the grievance process. It would also be completely contrary to long-settled Supreme Court law.

At no time did the Union act "arbitrarily," nor did it simply drop or abandon the grievance filed by Charging Party or others, as is suggested by the language in the complaint. Rather, both the USPS and the Union were faced with grievances over a faulty seniority list used for several bidding rounds by dozens of employees. The grievances were not abandoned. Rather, both parties negotiated at length and in good faith to reach a mutually agreeable outcome, based on the revised and corrected seniority list.

The CBA does not require any particular remedy in bidding disputes and back pay is not a required remedy to adjust a bidding error. The parties negotiated in good faith to reach as good a settlement as was possible under the circumstances. Seniority, bidding and the cascading bumping that takes place make any retroactive remedy extremely difficult to apply. Complicating the mix was the fact that some employees bid on some vacancies but didn't bid on others. Yet, many months later when the parties attempted to put the proverbial egg back together, they had to take into account all kinds of contingencies that would be affected by seeking a perfect remedy for everyone. Such a remedy is impossible as even doing strictly what the contract required would mean some employees lost routes they preferred, lost regular

carrier status or were required to give back money from benefits they had received improperly. So any remedy was likely to make someone unhappy. But the parties bargained strenuously to achieve the best possible resolution under very difficult circumstances.

This was not "arbitrary" conduct by the union or management in the least. As such, these negotiations are not subject to attack or second-guessing by the NLRB. Under ample Supreme Court precedents, the NLRB cannot prevail in this case based on the mere accusation of "arbitrary" action. Much more needs to be alleged and proven. For example, The Court requires that in order to prove a breach of the duty of fair representation the NLRB must produce "substantial evidence of discrimination that is intentional, severe and unrelated to legitimate union objectives." Street Elec. Ry. Motor Coach Employees v. Lockridge, 403 U.S. 274, 301 (1971); Hines v. Anchor Motor Freight, 424 U.S. 554, 570-71 (1976)(and more than mere error in judgment). More to the point in dealing with the settlement of grievances, the Court has stated that union resolution of disputes can be found "arbitrary" "only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness [citations omitted] as to be irrational." *Air Line Pilots Ass'n. v. O'Neill*, 499 U.S. 65 (1991). The Court went on to explain that it is not within the authority of the courts [or the Board] to attempt to evaluate the merits of a particular dispute and substitute its own view of a better settlement. The Court stated in blunt and clear terms the following admonition:

> Congress did not intend judicial review of a union's performance to permit the court to substitute its own view of the proper bargain for that reached by the union. Rather, Congress envisioned the relationship between the courts and labor unions as similar to that between the courts asnd the legislature. Any substsantive examination of the union's performance, therefore, must be highly defferential. 499 U.S. at 78.

Mere negligence is not sufficient. Discrimination must be alleged and proven. Here, no such allegation is made. Nor does the NLRB even refer to the negotiated settlements that are at the core of the Charging Party's concerns. Instead, the NLRB is merely substituting its judgment for that of the union in terms of what the settlement "should have been" – and the Region apparently told the union that during the investigation: that the union should have tried harder. That is not within the NLRB's authority to decide or take action about.

In point of fact, Charging Party won her grievance and received the proper seniority and the proper bid she was seeking. The union did not arbitrate her case because it achieved the proper resolution through negotiations. To the extent that Charging Party may have been seeking more than her proper seniority or more than the bid (delivery route assignment) she wanted, such additional demands by Charging Party are not included within the terms of the CBA. She had no fixed entitlement to any other remedy and the union did not err (as the NLRB claimed) by failing to press for more. USPS also stood in the way and was determined to fix the seniority and bidding glitches, and we did so. We did not think it appropriate or even feasible to provide additional relief (such as back pay), regardless of how much the Union may have pressed for more. The Union's hard bargaining and its actions resolved the grievances and its actions cannot be considered arbitrary in the least. Absent proof of active hostility or discrimination toward Charging Party, the NLRB's complaint allegations are simply unsupported by the law – even if true.

It is also worth mentioning that at material times related to the grievance and the charge/complaint, Charging Party Amanda Williams has been a statutory supervisor, acting in a temporary supervisor capacity ("204b" in CBA parlance).

Any useful remedy against the Union would likely include some kind of retroactive amelioration of the alleged CBA breaches. This would mean undoing the settlements to which the USPS is a party, and somehow trying to achieve a different result - with the USPS. That possibility (though remote) is a compelling basis itself to grant USPS party status in this case and allow it full participation.

For these reasons, the USPS respectfully requests that the Judge grant the motion to intervene to allow USPS to participate by filing a post-hearing brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2018, I served the foregoing Motion to Intervene upon the following individuals:

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